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NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

FORCES ACTION PROJECT, LLC, a
California limited liability company et al.,

Plaintiffs - Appellants,

v.

STATE OF CALIFORNIA et al.,

Defendants,

and

BILL LOCKYER, Attorney General, State of
California et al.,

Defendants - Appellees.

No. 02-15336

D.C. No. CV-99-00607-MJJ

AMENDED MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Martin J. Jenkins, District Judge, Presiding

Submitted February 6, 2003**
San Francisco, California

*/ This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

Before: GOODWIN, GRABER, and McKEOWN, Circuit Judges.

Forces Action Project, a smokers' rights organization, and individual smokers filed this action against the Attorney General of the State of California and four major cigarette manufacturers. Plaintiffs seek to invalidate the Master Settlement Agreement (MSA), in which 46 states and several U.S. territories agreed to settle their claims against the cigarette manufacturers for recovery of smoking-related health-care costs. Plaintiffs sought leave from the district court to file an amended complaint alleging that, through the MSA, Defendants are operating an output cartel and controlling cigarette prices in violation of the Sherman Anti-Trust Act, 15 U.S.C. §§ 1-7. The district court denied Plaintiffs' motion to amend.

Plaintiffs assert that the district court committed an error of law by relying on undue delay alone as justification for denying their motion to amend. See Bowles v. Reade, 198 F.3d 752, 758 (9th Cir. 1999) ("Undue delay by itself . . . is insufficient to justify denying a motion to amend."). However, we also have held that, even if a district court provides an insufficient explanation for denying a motion to amend, we may affirm if a satisfactory ground for denial is "readily

apparent" from the record. Ascon Props., Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir. 1989).

It is readily apparent from this record that Defendants will suffer prejudice if Plaintiffs are allowed to amend their complaint. See Griggs v. Pace Am. Group, Inc., 170 F.3d 877, 880 (9th Cir. 1999) (citing prejudice to the opposing party as a ground for denial of leave to amend). Because dismissal of the entire action would be warranted if Plaintiffs had not belatedly sought to allege antitrust violations, Defendants will incur additional litigation expenses if Plaintiffs' amendment is allowed. See Ascon Props., 866 F.2d at 1161 ("To put [the defendant] through the time and expense of continued litigation on a new theory, with the possibility of additional discovery, would cause undue prejudice." (citation and internal quotation marks omitted)).

Additionally, we note that Plaintiffs presented no new facts, but only new theories, and provided no satisfactory explanation for their failure to develop all theories earlier. See Allen v. City of Beverly Hills, 911 F.2d 367 (9th Cir. 1990) (affirming denial of leave to amend under that standard). In the circumstances, the district court did not abuse its discretion.

AFFIRMED.